

**BEFORE THE INDIANA
BOARD OF SPECIAL EDUCATION APPEALS**

*In the Matter of L.W., the Valparaiso)
Community Schools and the Porter) **Article 7 Hearing No. 1037-98**
County Education Interlocal)*

This hearing was initiated by the parent's request for hearing, which was received by the Division of Special Education, Indiana Department of Education, on April 29, 1998. On that same date, James Roth was appointed as Independent Hearing Officer (IHO). Numerous extensions of time were requested by the parties and granted by the IHO. While the hearing was still pending the Student was suspended from school and detained by the Juvenile Court. [\(1\)](#) The Juvenile Court issued an order excluding the Student from attending, and the school indicated its intention to seek expulsion. During the course of the hearing, the IHO recused himself for bias resulting from the parent's course of conduct. Kristin Anderson was subsequently appointed as IHO to finish the hearing. The written decision was rendered on March 8, 1999. The lengthy procedural history is more fully detailed below:

April 29, 1998 Parent's request for hearing received by the Division of Special Education.

April 29, 1998 James Roth appointed as IHO.

June 9, 1998 School requests an extension of time and a prehearing conference.

June 12, 1998 IHO grants request for extension of time and schedules telephone prehearing conference for June 26, 1998. Decision due by July 15, 1998.

June 26, 1998 Prehearing conference does not take place because parent forgot.

July 2, 1998 Prehearing conference rescheduled for July 13, 1998.

July 13, 1998 Prehearing conference held. Both parties request extension of time.

July 15, 1998 IHO issues prehearing order granting extension of time, identifying four issues for hearing, and advising the parties of hearing rights and procedures. The hearing is scheduled for September 3 and 4, 1998, with the decision due by September 21, 1998.

August 16, 1998 Parent requests further extension of time due to illness.

August 28, 1998 IHO grants extension of time. The hearing is scheduled for October 26 and 27, 1998, with the decision due by November 10, 1998.

October 26, 1998 Hearing begins.

October 27, 1998 Hearing continues, but is recessed so parent could respond to a family medical emergency. Parent calls IHO to indicate she needs to stay home the rest of the day with her daughter. Parent requests extension of time.

October 30, 1998 IHO grants parent's request for extension of time. Hearing to resume December 8, 9 and 10, 1998, as necessary, with the decision due by December 23, 1998.

November 5, 1998 School issues 5-day suspension after Student sets an abandoned sweatshirt on fire in the school building. Student was detained by the Juvenile Court.

November 7, 1998 Parent writes IHO requesting homebound instruction.

November 8, 1998 Parent files complaint with Division of Special Education alleging school improperly released information about the Student to police.

November 10, 1998 IHO notifies school of parent's request for homebound instruction and suggests dates for conference call. School provides IHO with possible dates.

November 12, 1998 Juvenile Court issues order excluding Student from school.

November 18, 1998 School issues letter to parent requesting dates for conference call and case conference committee meeting.

November 19, 1998 School issues letter notifying parent of its intention to seek expulsion of the Student.

November 19, 1998 IHO orders school to provide options for an interim placement for the Student by the end of the business day on November 20, 1998.

November 22, 1998 School faxes options to IHO and sends copy to parent.

November 23, 1998 IHO issues order on interim placement. The IHO also assumes jurisdiction over two of the three complaint issues which the parent had submitted to the Division of Special Education. The IHO further orders the parties to hold a case conference committee (CCC) meeting as soon as possible and provides that if the CCC had not been held prior to the hearing date of December 8, 1998, then the CCC will be held at 8:30 a.m. on December 8 with the hearing convening at 1:00 p.m. on December 8, 1998.

November 30, 1998 School issues first notice of CCC to determine causal relationship.

December 1, 1998 School issues second notice of CCC to determine causal relationship.

December 2, 1998 CCC meets to determine causal relationship. Parent and school disagree.

December 7, 1998 Division of Special Education issues complaint investigation report, finding school did not violate regulations regarding the release of information about the Student.

December 8, 1998 Hearing resumes, but terminates when the IHO recuses himself for bias resulting from the parent's course of conduct.

December 9, 1998 Kristin Anderson is appointed as IHO.

December 10, 1998 Prehearing conference held.

December 11, 1998 Parent requests second IHO to change Student's interim placement.

December 14, 1998 Prehearing conference held. Parent's request for change of placement is denied. School's request for extension of the hearing deadline is granted. Hearing is rescheduled for January 14, January 21, and 22, 1999. Additional issue for hearing is added.

January 11, 1999 Prehearing conference held.

January 14, 1999 Hearing resumes. Additional issue for hearing is added.

January 21, 1999 Hearing continues.

January 22, 1999 Hearing continues. Additional hearing dates are set for February 17 and 18, 1999. The parent is ordered to provide the school with the names of persons employed by the school or interlocal whom she intends to call as witnesses by February 11, 1999, so that their positions might be covered by others.

February 10, 1999 Juvenile Court issues dispositional order. The parent is ordered to enroll the Student in a specified alternative school or such other educational program as she deems appropriate.

February 11, 1999 Juvenile Court amends order to clarify that no alternative educational facility was being ordered to involuntarily enroll the Student.

February 17, 1999 Hearing resumes.

February 18, 1999 Hearing concludes.

The due process hearing, conducted on eight days from October 26, 1998, through February 18, 1999, addressed eight issues raised by the parties. The following issues were identified at the July 13, 1998, prehearing conference:

Whether the child will be denied a free and appropriate public education due to the following reasons:

1. Whether the school is responsible for the costs of the Student's placement in a day treatment program through Southlake Center for

Mental Health, to the extent of costs not being paid by medical insurance.

2. Whether the school has an appropriate behavior management plan or program for this student, and whether it was appropriately implemented?
3. Whether the school has appropriately evaluated and identified all of the student's needs?
4. Whether the school has an appropriate program for all of the student's needs for the 1998-1999 school year.

On November 23, 1998, the first IHO added the following complaint issues at the request of the parent:

5. Whether the school failed to implement the Student's last agreed-upon individualized education program (I.E.P.) in the absence of a current I.E.P. signed by the parent.
6. Whether the school failed to provide educational services to the Student subsequent to the completion of a period of suspension from school, but when the student was under court order not to be on school grounds.

On December 14, 1998, another issue was added at the request of the school:

7. Whether there was a causal connection between the Student's emotional handicap and his alleged misconduct of setting a fire on school premises.

On January 14, 1999, the following issue was expressly agreed to by the parties so that the Student's current circumstances would be considered:

8. What is the appropriate educational program and services for the Student at this time?

The IHO's Written Decision

The Student is 14 years of age and in the fall of 1998 was an eighth grade student in a middle school. He was first evaluated in April, 1991, at the request of his kindergarten teacher because of social, emotional, behavioral, and attention problems. The multi-disciplinary team concluded that while he displayed characteristics of a child having attention deficit disorder, his behavior was interpreted as stemming from a conduct disorder rather than an emotional handicap. The Student was evaluated again in the spring of 1993. The evaluation noted he evidenced a pervasive mood of unhappiness and had significant difficulties in building and maintaining satisfactory interpersonal relationships. Behavior problems, weak work habits and a short attention span were also noted, although the Student had no problem with academic work. The Student was on medication for inattention and depression. He was found eligible for special education services due to an emotional handicap and I.E.P. goals and objectives were developed in the areas of behavior, social skills, written expression and study skills.

The IHO's written decision, rendered on March 8, 1999, contained forty-two findings of fact addressing the eight issues. The Student has a history of behavioral difficulties in the school setting since kindergarten. By 1993 the Student had received at least two psychiatric hospitalizations and was on medication for attention deficit disorder and depression. The Student's mental conditions stem from a family history of severe abuse and dysfunction, personal loss and probable genetic contributions. The Student's behaviors are a problem at home and in the community as well as in the school setting. Each of the Student's psychiatrists has recommended the Student be placed in a residential facility where he can receive intensive treatment for his psychiatric conditions. A therapeutic day school with small classes and teachers with behavior management expertise has been recommended as an alternative.

The Student's emotional handicap under Article 7⁽²⁾ is not coextensive with his psychiatric conditions although some behaviors are of both psychiatric and educational concern. The symptoms and behaviors which impact directly on the Student's education are irritability, impulsivity, disruptive attention-seeking behavior, and poor relationships with peers and teachers. The problematic relationship behaviors include aggressiveness, argumentativeness, threats and bullying, disrespect and defiance of teachers and staff.

The Student can and does exercise control over his behaviors, especially when he perceives that there will be unpleasant consequences when he cannot escape. The Student will continue to misbehave just up to the point that consequences will occur and then will abruptly cease or de-escalate that behavior. The IHO observed the Student during five days of hearing in January and February, 1999, and observed no inappropriate behavior. The Student behaved in a polite and cooperative fashion.

During the spring of 1997, the school followed a behavior plan similar to the behavior plan which had been implemented in the Student's hospital day-treatment setting. The school was in the process of adjusting the behavior plan to address behavior problems at the time of the locker-room incident on April 23, 1997, which led to the Student's arrest and prosecution in juvenile court. After the incident, the school and parent agreed to the addition of a supervision component to avoid further incidents.

The psychiatric report recommending intensive treatment in a residential adolescent treatment facility was not issued until June 3, 1997. The parent did not give notice challenging the appropriateness of the Student's placement nor her intent to enroll the Student in a day-treatment program at public expense before the Juvenile Court, on June 4, 1997, ordered the parent to find treatment for the Student.

In August, 1997, the parent failed to indicate why she believed the Student's then-current I.E.P. was inappropriate, nor did she give the school notice alleging how the I.E.P. was deficient, although she was notified that failure to do so would prejudice any right she might have to reimbursement for a private placement. The parties have had numerous CCC meeting in attempts to meet the needs of the Student, indicating the school's willingness to consider more intensive educational services for the Student prior to the parent's unilateral placement of the Student at the day-treatment facility. The Juvenile Court's order of June 4, 1997, adjudged the Student to be a Delinquent Child and required the parent to enroll him in an intensive treatment program or in a specified summer camp. There is no evidence this Order, made at the end of the school year, was for educational rather than general rehabilitative purposes.

The behavior plan in effect at the time the parent requested this hearing was developed in January, 1998, to transition the Student from the day-treatment facility. The parent approved the I.E.P.s containing this plan on January 26, 1998, and March 20, 1998. The CCC notes from March 17, 1998, indicated the Student's overall behavior was within acceptable parameters and the Student's behavior in his general education classes was noticeably more appropriate than that shown in his special education classes. Most behavior problems arose when the Student was confronted about incomplete schoolwork. The March, 1998, amendment to the Student's I.E.P. attempted to minimize homework issues by modifying the grading of his general education classes to "Pass/Fail" and by allowing him to do homework during class time.

The school's evaluations were not incomplete or inaccurate. The school considered the parent's independent psychiatric evaluations and has never disputed any of the Student's psychiatric diagnoses. The disagreements regarding identification center around what impact, if any, the Student's Attention Deficit Hyperactivity Disorder has on his behavior in the educational setting. With medication, the Student is not significantly more inattentive or hyperactive than his nonhandicapped classmates. The school conducted a re-evaluation of the Student in April and May of 1998 at the parent's request and pursuant to the time parameters agreed to in the Student's "hospital transition" conference held in January, 1998. The Student's problematic behaviors have been adequately identified and addressed in the Student's I.E.P.s.

In May, 1998, the CCC, including the parent, developed an I.E.P. for the 1998-1999 school year considering information from the recent re-evaluation. Goals and objectives were identified to improve the Student's social and emotional functioning and study skills. A behavior plan was included detailing individual, classroom and school expectations for the Student and was tailored to deal with the Student's specific problems with substitute teachers and incomplete homework. Disciplinary procedures were customized for the Student.

The parent did not voice any significant disagreement with the I.E.P. developed in May, 1998. The parent was advised of her parental rights. The parent did, however, include issues relating to the appropriateness of the Student's program in the hearing issues first formulated in July, 1998. During the first week of October, 1998, the school and parent agreed to an informal adjustment to the child's behavior plan. The I.E.P. developed in May, 1998, but not signed by the parent, was implemented by the school during the fall semester until November 4, 1998. There was no evidence the implementation of the unsigned I.E.P. was intentional and the school acted promptly to reinstate the March, 1998, I.E.P. upon realization of their error. The only significant difference between the I.E.P. of March, 1998, and the proposed I.E.P. of May, 1998, was that the latter made provisions in the Student's behavior plan to deal with problems with substitute teachers. While both I.E.P.s were appropriate, the May plan was more responsive to the Student's needs in managing predictable conflicts with substitute teachers.

The Student's suspension at issue began on November 10, 1998. The conduct triggering the suspension also resulted in the Student's detention by the Juvenile Court. The school was not a party to that proceeding and could not forecast the time period the Court would detain the Student. The suspension ended on November 18, 1998, and by that time the Juvenile Court had issued an order excluding the Student from the middle school. The school began working in good faith with the IHO to discuss an alternative interim placement on the first day of the Student's five-day suspension. Due to scheduling difficulties, the interim placement was not ordered until the third day after the suspension ended. Interim services were in place for the Student at the time ordered by the IHO. The Student had spent a total of five days without services.

The Student has a history of impulsive or habitual behaviors, best characterized as immediate responses to what the Student perceived to be verbal or physical confrontation. The Student does not possess enough internal controls to consistently interrupt these impulsive or habitual responses. To the extent the Student misinterprets the intentions and behaviors of others, such behaviors are related to the Student's inappropriate feelings under normal circumstances. The Student also exhibits numerous disruptive behaviors which are well within the Student's control. The Student will initiate or continue these behaviors only to the extent that he perceives there will be no consequence to him or that those consequences will not be more certain, swift and severe than the "thrill" of the attention from his peers or the power struggle/"mind games" with his teachers. These behaviors also relate to the Student's inability to build and maintain interpersonal relationships by socially acceptable means.

At times the Student also exhibits inappropriate behavior which requires some degree of forethought and planning. These behaviors include exacting revenge on peers for their prior conduct and bringing inappropriate items such as rubber bands, matches, lighters and a flare to school. The occasional nature of these acts together with the Student's inability to control other genuinely impulsive acts support the conclusion that these behaviors are not the result of any irresistible impulse connected with his emotional handicap under Article 7.

The Student showed no sign of emotional upset or animosity toward the owner of the sweatshirt on the day he lit the fire. The circumstances and location of the fire, together with the Student's attempts to evade detection and hiding the matches indicate the fire was not set with the purpose of creating a disturbance and drawing attention to himself. The fact the Student brought matches and a flare to school indicate the Student was contemplating misbehavior. There was no convincing evidence to show this behavior was related to any feature of the Student's emotional handicap under Article 7.

The Student's psychiatrists have all recommended placement in a residential adolescent treatment facility in order that he may receive the intensive therapy necessary to deal with his psychiatric disorders. Although these recommendations date back to at least June, 1997, the parent

has not arranged this level of treatment. An alternative recommendation has been an intensive day-treatment program with teachers having expertise to manage the Student's behaviors and needs. Under court order, the parent arranged such a placement which was ultimately terminated by reason of the Student's behavior. The Student's education needs are such that he requires supervision, a predictable structure, consistency, and a staff trained to deal with his difficult emotional and persistent behavioral issues.

Based upon the foregoing facts, the IHO made conclusions of law on each of the eight issues presented for the hearing. The parent did not provide adequate notice to the school regarding how the Student's then-current I.E.P. was alleged to be deficient, nor did the parent provide notice that it was her intent to place the Student in the day-treatment program at public expense, and to continue such placement, even after the school notified her that such notice was required by the June, 1997, amendments to the Individuals with Disabilities Education Act (IDEA). The school at all times had been willing and able to provide an appropriate education program for the Student and has offered programs suitable to address the Student's needs. The parent is not entitled to reimbursement from the school for any portion of the expense of the Student's placement at the day-treatment facility.

The Student was responsive to and benefitted from the behavior management plan. The Student's behavior management plan was appropriately implemented. The school has appropriately evaluated and identified the Student's needs as a Student with an emotional handicap. The school used appropriate procedures in identifying the Student's disability and in responding to what were perceived to be changes in his needs when the CCC met in June, 1998. An appropriate I.E.P. was developed with significant parental input. The school has not denied the Student a free appropriate public education by any failure to develop and offer an appropriate educational program for the 1998-1999 school year.

The appropriateness of the proposed I.E.P. for the 1998-1999 school year was an issue for this hearing. The school should have been put on notice of the parent's disagreement with that plan. After school had been in session over two months and the parent objected to the implementation of the proposed, but unsigned, I.E.P., the school immediately reinstated the former I.E.P. There was no evidence the implementation of the unsigned I.E.P. was other than a procedural oversight. The proposed plan did not differ significantly from the former plan, and was more, rather than less, appropriate for the Student. The Student was not denied a free appropriate education by virtue of the school's failure to implement the last agreed-upon I.E.P.

Because the due process hearing was pending at the time of the Student's suspension from school, all matters relating to the placement of the Student pending a hearing decision became the ultimate responsibility of the IHO. The school was not free to reinstate the Student's prior placement because of the Juvenile Court's order excluding the Student from school. The school also could not institute alternative services without either the consent of the parent or order of the IHO. The school was ready, willing and able to provide interim services as soon as ordered by the IHO. The school has not, therefore, deprived the Student of educational services without due process of law.

The act of setting the fire, although in the school building, was totally outside of the context of the Student's school relationships and his educational handicaps. There was no causal connection between that act and his emotional handicap under Article 7. The school is free to seek expulsion of the Student but must provide educational services.

The hearing process, the fire-setting incident and the unusual delays occasioned by the behavior and circumstances of the parent extended the time frame for the resolution of hearing matters to nearly eleven months, such that the program offered by the school in June, 1998, nearly nine months ago, was no longer appropriate to meet the needs of the Student. By the time the decision is rendered and implemented, the Student would have been in his interim placement for approximately seventy (70) days rather than the fifteen (15) days anticipated by the original IHO. The IHO concluded as a matter of law that the Student was entitled to extended school year services for the summer of 1999 to stabilize him in his placement and to assess what, if any, ground needed to be recouped as a result of the protracted interim placement. The Student's educational

needs could not reasonably be met in the context of the regular middle school setting. The least restrictive setting in which the Student's needs could be met was the Learning Place. As this is a private setting, the IHO could not order the school to enroll the Student. The least restrictive public setting which can meet the Student's needs is the Special Education Learning Facility of the special education interlocal.

Based upon the foregoing findings and conclusions, the IHO issued five orders:

1. The school and interlocal shall develop and implement procedures to follow-up with parents when the I.E.P. developed and proposed is not signed at the I.E.P. team meeting. They shall also devise a system to "red-flag" or otherwise clearly identify whether individual education plans are "preliminary drafts," "proposed," "current" or "superceded." This order is hereby referred to the Division of Special Education for compliance and monitoring.
2. The school may proceed to expel the Student if it so chooses and pursuant to its regularly established policies.
3. The school shall draft and implement an individual education plan for the Student consistent with this hearing decision, including provisions for an extended 1998-1999 school year until the Fall semester.
4. The Student shall remain in the placement ordered by this decision until the CCC agrees that the Student no longer needs the supervision, structure, consistency, and staff expertise required by this placement.
5. The parties are ordered to implement the provisions of this decision within thirty (30) calendar days from the date this decision is received, unless, during that time, an appeal to the Board of Special Education Appeals is filed.

Procedural History of the Appeal

On April 10, 1999, the parent filed a written request for an extension of time in which to file her petition for review. This Board of Special Education Appeals' (BSEA) written order of April 10, 1999, extended the time for the parent to file her petition for review until May 12, 1999, and extended until June 14, 1999, the deadline for the written decision in this matter. The parent's petition for review was timely filed on May 12, 1999. On May 17, 1999, the school, by counsel, requested an extension of time to file its response. This request was granted by the BSEA on May 18, 1999. The school's response was therefore due by June 18, 1999, with the BSEA's written decision to be issued by June 30, 1999. On May 24, 1999, the BSEA received the parent's objection to the school's request for extension of time. The parent's objection is deemed overruled. On May 25, 1999, the parent filed a complaint with the Division of Special Education. One of the issues in the complaint concerned the IHO's order placing the Student in an alternative setting for more than forty-five (45) days. This issue was referred to the BSEA as it pertains to the issues and procedures in this matter. The school's response to the petition for review was timely filed by facsimile transmission on June 18, 1999. On June 21, 1999, the parent filed a complaint for noncompliance with the Division of Special Education concerning issues pertaining to extended school year, noting that an extended school year was part of the hearing officer's March 8, 1999 order. The Division of Special Education has referred this complaint to the BSEA as it pertains to the IHO's order. On June 22, 1999, the BSEA received the parent's letter objecting to the alleged late filing of the school's response and requesting an extension of time for the BSEA's consideration of this appeal to allow time for the parent to receive the transcript of the proceedings held on December 8, 1998.⁽³⁾ The BSEA denied the parent's request for an extension of time by order dated June 22, 1999.

The Parents' Petition for Review

The parent's petition for review alleges violations of the student's and parent's rights to an impartial due process hearing, violations of the student's rights to a free and appropriate public education, and bias demonstrated by both hearing officers and the general counsel for the Indiana Department of Education. The parent specifically objects to the first IHO's order for an interim alternative education setting placement and claims it was made without prior knowledge, discussion or agreement by the parent. The parent objects to an alleged *ex parte* communication between the first IHO and counsel for the school relative to the IHO's November 19, 1998 order. The parent objects to not receiving copies of motions transcribed on December 8, 1998. The parent objects to the second IHO's actions in allowing the Student to remain in the interim alternative educational setting for more than forty-five (45) days without a written order.⁽⁴⁾ The parent also alleges bias on the part of the second IHO in granting the school's requests for extensions of time. The parent disagrees with the IHO's determination that the Student's behavior was not related to his disability. The parent claims the IHO ignored Juvenile Court Orders relative to the Student's educational placement. The parent also objects to the IHO's findings that the Student was present during the five January and February dates of the hearing, stating instead that the Student was only present for a short time on one day of the hearing. Finally, the parent states concerns about future investigations by the Indiana Department of Education and the Division of Special Education, claiming that such investigations will be biased with the negative/inappropriate attitude of the general counsel.

School's Response to Parent's Petition for Review

In its response, the school states the parent and Student were given an impartial hearing which did not violate their rights under either IDEA or Article 7. The change in the Student's placement was not an "interim alternative educational placement" for misconduct that involves drugs, weapons or behavior likely to result in injury to self or other as specified in 20 USC §1415(k)(7)(C), but was rather a change in placement necessitated by the juvenile court's order preventing the Student from returning to school and was made in response to the parent's request. As such, the forty-five (45) day time limit for interim alternative educational placements is not applicable. The IHO did not recuse himself due to alleged *ex parte* communications with the school's attorney, but rather due to the conduct of the parent. The IHO did not demonstrate bias in scheduling additional hearing dates, as such were necessitated by the parent's request. The IHO's determination the Student's behavior was not related to his disability was supported by substantial evidence. The parent has failed to cite how the IHO failed to consider the juvenile court's order. The school points out the IHO did have the opportunity to observe the Student during the hearing on January 21, 1999, and on other days before the hearing, during breaks, and after the hearing. The school has no knowledge of the parent's contacts with the Indiana Department of Education (IDOE). Due to the IHO's recusal, the court reporter sent the transcript to the school, where it was filed with the Student's record. There was no deliberate effort by the IDOE or the school to withhold this portion of the transcript from the parent.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The Indiana Board of Special Education Appeals met on June 25, 1999, to conduct its review of the above-referenced matter without oral argument. All members were present and had reviewed the record, the Petition for Review, Response and other pleadings and complaints. The Indiana Board of Special Education Appeals now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The Indiana Board of Special Education Appeals (BSEA) has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. The IHO's Findings of Fact are supported by substantial evidence.
3. The IHO's Conclusions of Law are consistent with the facts and the law in this matter.
4. Orders # 5.1, # 7.1, # 8.2 and # 8.3 should be upheld as written.
5. Transportation should be included as a related service for extended school year services for the 1998-1999 school year.
6. The juvenile court had issued an order preventing the Student from returning to his school.

In response to a request from the parent, the IHO ordered an interim placement for the Student pending the resolution of the hearing. Due to extensions of time requested by both parties, this interim placement exceeded forty-five (45) days. This placement was not, however, ordered pursuant to 20 USC §1415(k), but was made to provide educational services available to the Student during the time the juvenile court prohibited his attendance at the school. The IHO did not err or exceed her jurisdiction in ordering an interim placement for the Student.

All votes by the BSEA regarding the above were voice votes and were unanimous.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board of Special Education Appeals now holds:

1. The IHO's Findings of Fact and Conclusions of Law are upheld as written.
2. The IHO's Orders # 5.1, # 7.1, # 8.2 and # 8.3 are upheld as written.
3. Order # 8.1 is amended to read as follows:

The School shall draft and implement an individual education plan for the child consistent with this hearing decision, including provisions for an extended 1998-1999 school year, which included transportation as a related service, until the Fall semester.

4. All other Motions not specifically addressed herein are hereby deemed denied.

Date: June 25, 1999

Richard L. Therrien, Chair

Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).

1. Although separate and distinct from the due process hearing, the Juvenile Court proceedings, including the Student's detention and various Court orders concerning the Student's attendance at school, had an impact on the process of this hearing. Reference is made to the Juvenile Court proceedings only to the extent such proceedings impacted the due process hearing.
2. 511 IAC 7-3, *et seq.*
3. Proceedings were held on the record on December 8, 1998, during which time the first IHO set forth his reasons for recusal. The parent has made several requests to the Division of Special Education for a copy of all motions made on that date. The parent was provided a copy of the transcript of the proceedings in this matter which had been submitted by the IHO. During the time that the BSEA was reviewing the record in preparation for its consideration of the appeal it was noticed that thirty-two pages of the transcript were missing. These pages covered the proceedings held on December 8, 1998. Neither IHO was in possession of this transcript. Upon further inquiry, it was learned the court reporter had sent the original transcript to the school's attorney. This transcript was not received from the school's attorney until June 22, 1999.
4. This issue is contained in both the parent's petition for review and the complaint referred to the BSEA by the Division of Special Education Appeals.